IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 11.06.2007

Coram

The Honourable Mr. A.P. SHAH, CHIEF JUSTICE
and
The Honourable Mr. Justice P. JYOTHIMANI

W.A. No.770 of 2007 and
M.P. No.1 of 2007

1. State of Tamil Nadu,
   rep. by its Secretary to
   Government,
   Home Department,
   Fort St. George,
   Chennai - 9.

2. The Director General of Police,
   Santhome High Road,
   Mylapore, Chennai - 4.

3. The Inspector General of Police,
   Armed Police, Kilpauk,
   Chennai - 10.

4. The Deputy Inspector General
   of Police,
   Armed Police, Kilpauk,
   Chennai - 10.

5. The Commandant,
   Tamil Nadu Special Police,
   III Battalion, Chennai - 55. ... Appellants
   (Veerapuram)

..vs..

WEB COPY

C. Sudharsanam ... Respondent

Appeal under clause 15 of the Letter Patent filed to set aside the order dated 16.2.2007 in W.P. No.3981 of 2006 on the file of this Court. This petition presented to this Court under Article 226 of constitution of India to issue a writ of Certiorarified Mandamus calling for the records relating to the order dated 31.8.2004 passed by the first respondent in GO (2D) No.395 confirming the punishment of

https://hcservices.ecourts.gov.in/hcservices/

reduction of pay by two stage for two years without cumulative effect imposed by the 5th respondent in PR No.34/2002 dated 26.9.2002 and quash the same and consequently to direct the respondents 2 to 5 herein to grant all consequential service and monetary benefits the petitioner.

For Appellant : Mr. Raja Kalifulla, Govt. Pleader

For Respondent : Mr. H.S. Mohammed Rafi

JUDGMENT

(Judgment was delivered by THE HONOURABLE CHIEF JUSTICE)

Admit. Learned counsel appearing for the respondent waives service.

2. This appeal is directed against the order passed by the learned single Judge, whereby the order of the Appellate Authority dated 30.11.2002 and the consequential orders passed subsequently are set aside and the Appellate Authority is directed to consider the appeal filed by the respondent by following Rule 15A of the Tamil Nadu Police Subordinate Rules and pass revised orders within a period of six weeks.

3. The respondent was appointed as Police Constable by direct recruitment on 26.12.1985 and promoted as Lance Nayak in the year 1993 and further promoted as Nayak in the year 1994. The respondent was further promoted as Havildar in the year 1996 and he was posted as Trainee Instructor in Cuddalore in the year 2002. The Inspector of Police (Chief Drill Inspector), Cuddalore framed four charges against the respondent, which read as follows:-

"1st Charge:

That the petitioner obtained 5 days leave from 29.3.2002 and did not report duty on 3.4.2002, and reported only on 4.4.2002. That the petitioner after taking leave for a period of 2 days from 14.4.2002 reported to duty only on 17.4.2002 at about 2.00 p.m. instead of 12.00 p.m.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2nd Charge:

That the petitioner tried to receive Rs.50/- each from Trainee Recruits namely Mr.Jothi and Ramadoss.

3rd Charge:

That the petitioner while washing his plate in the dining hall of the water fell on the cook and further while going to take lunch the petitioner did not wear chappal.

4th Charge:

That the petitioner has been frequently requesting the Inspector for grant of leave and on 29.4.2002 that the petitioner sought leave only in order to avoid the inspection by the Deputy Inspector General of Police."

4. The respondent submitted his reply to the Authorities. According to the respondent, insofar as the first charge is concerned, he was on duty in the stores from 29.3.2002 to 1.4.2002 as instructed by the Inspector and on 2.4.2002, he appeared before the Egmore Court in connection with a case and on 3.4.2002, the respondent was not doing well, for which he produced medical certificate issued by the Government Hospital and on 4.4.2002 he reported for duty. With regard to the second charge, no documentary or oral evidence was produced to prove the same and during the personal enquiry, the trainee recruits namely, RPC Nos.50 and 55 have stated that the respondent did not receive nor demand any amount. The third charge is stated to be vague. As regards the 4th charge, the respondent's contention is that he requested for leave from the competent authority and not from the superior officers like the Assistant Commandant or Deputy Commandant and the leave sought was only for appearing before the Egmore Court and the Officer should have either granted or rejected the leave requested for and no charge could be framed.

5. On the above charges, an enquiry was conducted and the Enquiry Officer held that the charges were proved. The disciplinary authority agreeing with the Enquiry Officer's report imposed a punishment on 26.9.2002 in P.R.No.34 of 2002 by reducing two increments for a period of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

two years without cumulative effect. The respondent preferred an appeal before the Appellate Authority and the said appeal was dismissed by the Appellate Authority on 30.11.2002. The respondent filed a review petition before the third appellant, which was also rejected on 18.2.2003. The mercy petition filed before the State Government was also rejected on 27.8.2003. Again the respondent submitted a representation before the Government and the same was also rejected by G.O.2D No.395, dated 31.8.2004.

6. Being aggrieved, the respondent preferred W.P. No.3981 of 2006, which came to be partly allowed by the learned Single Judge holding that the Appellate Authority, while dealing with the appeal filed by the respondent, ought to have followed Rule 15A of the Tamil Nadu Police Subordinate Service Rules. According to the learned Judge, the order passed in the appeal is only a cryptic order, not even considered as to why the disciplinary authority differed with the findings of the Enquiry Officer and impose punishment. Consequently, learned single Judge set aside the order of the Appellate Authority and directed the Appellate Authority to decide the appeal afresh and pass a revised order on the appeal.

7. Mr. Raja Kalifulla, learned Government Pleader appearing for the appellants submitted that the learned single Judge committed serious error in holding that the enquiry Officer had dropped the charges as not proved. He pointed out that on the contrary, the Enquiry Officer had specifically held that the charges framed against the respondent are proved. He submitted that the learned Single Judge committed an error in relying on the decision of the Division Bench of this Court reported in the case of SRINIVASAN v. GOVERNMENT OF TAMIL NADU (1983(2) MLJ 513) and M. NAGARAJAN & OTHERS v. THE REGISTRAR, HIGH COURT & ANOTHER (2004(3) LW 32), which have no application to the facts and circumstances of the case on appeal.

8. Learned Government Pleader submitted that the order of the Appellate Authority shows that the Appellate Authority has applied his mind to the Rules and the order passed by the Appellate Authority is a speaking order. He further submitted that the punishment imposed by the Disciplinary Authority in the present case is a minor punishment. Therefore, the oral enquiry satisfies the Rules provided under the Tamil Nadu Police Subordinate Service Rules. Learned Government Pleader submitted that Rule 15A of the Tamil Nadu Police Subordinate Service Rules contemplates personal hearing only in cases where the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Appellate Authority proposes to impose any of the penalties provided in Clauses (d), (e) (3), (h), (i) and (j) of rule 2 or to enhance the penalty imposed by the Disciplinary Authority.

9. Learned counsel appearing for the respondent fairly conceded that the learned Single Judge has proceeded on the wrong assumption that the Enquiry Officer exonerated the respondent and the Disciplinary Authority differed with the findings of the Enquiry Officer. He, however, submitted that the Disciplinary Authority has not considered various legal aspects made by the respondent during the course of enquiry. According to him, the charges are false and fabricated and the Appellate Authority has not considered various submissions made by the respondent.

10. Rule 15A of the Tamil Nadu Police Subordinate Service Rules reads as follows,

> "15-A (1) Notwithstanding anything contained in these rules-
>
> (i) the State Government; or
>
> (ii) the Head of the Department directly under the State Government in the case of a Government servant serving in a department or office, under the control of such Head of the Department; or
>
> (iii) the appellate authority within six months from the date of the order proposed to be reviewed; or
>
> (iv) any other authority, specified in this behalf by the State Government by a general or special order, and within such time as may be prescribed in such general or special order
>
> may, at any time either on their or its own motion or otherwise, call for the records of any inquiry and review any order made under these rules, after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary and may,-
>
> (a) confirm, modify or set aside the order; or
>
> (b) confirm, reduce, enhance or set-aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(c) remit the case to the authority which made the order or to any other authority, directing such authority to make such further inquiry as it may consider proper in the circumstances of the case:

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government servant concerned has been given a reasonale opportunity of making representation. Where it is proposed to impose any of the penalties specified in clauses (d), (e) (3), (h),(i) and (j) of rule 2 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in sub-rule (b) of rule 3 and after giving a reasonable opportunity to the Government servant concerned of showing cause on the evidence adduced during the inquiry and except after consultation with the Tamil Nadu Public Service Commission, where such a consultation is necessary:

Provided further that no power of review shall be exercised by the Head of the Department, unelss-

(i) the authority which made the order in appeal; or

(ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

(2) No proceeding for review shall be commenced until after,-

(i) the expiry of the period of limitation for an appeal; or

(ii) the disposal of the appeal, where any such appeal has been preferred;

(3) An application for review shall be dealt with in the same manner as if it were an appeal under these rules;

(4) No application for review shall be preferred more than once in respect of the same order:

"Provided that members of the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

constabulary (Police Constables and Head Constables) shall be eligible to make one representation to the Government against orders of dismissal or removal from service after exhausting the right of appeal";

Provided further that no application for review shall be entertained, if it has not been made within a period of six months from the date of receipt of the order on which such application for review is preferred."

11. The Appellate Authority has dealt with the appeal filed by the respondent in accordance with the Rules and after extracting the charges, passed the following order:-

"3. I have gone through the minute in the light of the appeal petition and the connected records carefully. The delinquent has not raised any fresh points in his appeal. The charge against the delinquent has been clearly proved and I agree with the minute drawing officer in holding the charges as proved. The behaviour of the delinquent in the PRS is highly objectionable and will create a bad influence on the trainees. In fact the punishment is very lenient. There is no room for interference. The appeal is dismissed."

12. In the instant case, the Enquiry Officer has found all the charges proved and the Disciplinary Authority has confirmed the findings of the Enquiry Officer and imposed the minor penalty of stoppage of two increments without cumulative effect. The order of the Appellate Authority shows that he has examined the records and found that no fresh points are raised in the appeal. The Appellate Authority has found that the charges have been duly proved and the behaviour of the delinquent in PRS is highly objectionable and tried to create a bad influence on the trainees. We do not find any infirmity or illegality in the order of Disciplinary Authority or the Appellate Authority.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

13. In the result, we set aside the order of the learned Single Judge and allow the writ appeal. Consequently, the connected M.P. is also dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssa.

To

1. The Secretary to Government,
   State of Tamil Nadu,
   Home Department,Fort St. George,Chennai - 9.

2. The Director General of Police,
   Santhome High Road,
   Mylapore, Chennai - 4.

3. The Inspector General of Police,
   Armed Police, Kilpauk,
   Chennai - 10.

4. The Deputy Inspector General of Police,
   Armed Police, Kilpauk,
   Chennai - 10.

5. The Commandant,
   Tamil Nadu Special Police,
   III Battalion, Chennai - 55.
   (Veerapuram)

+1cc to M/s. H.S.Mohammed Rafi, Advocate SR 33640
+1cc to Govt. Pleader Sr 33594

WEB COPY

AKR (CO)
km/22.6.

https://hcservices.ecourts.gov.in/hcservices/